



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 7, 2016

BY ECF

Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

**Re: United States v. Kaleil Isaza Tuzman et al.,
S7 15 Cr. 536 (PGG)**

Dear Judge Gardephe:

Pursuant to the Court's order dated November 30, 2016, the Government writes to update the Court on the status of the forensic comparison analysis being conducted by the Securities and Exchange Commission ("SEC"). The SEC's forensic unit is comparing images of the Maiden computers produced to the FBI in or about August 2013 (the "FBI Images") against the images of the same computers produced by Maiden to the SEC in or about November 2014 (the "SEC Images").

As the Government outlined in its letter dated November 17, 2016, Maiden produced his computers to the SEC pursuant to civil subpoena. Maiden and the SEC entered into a Forensic Imaging and Analysis Agreement (the "Forensic Agreement") to protect certain privileges held by Maiden. The Forensic Agreement contained certain search terms (the "Search Terms") used by the SEC's forensic unit to identify potentially privileged documents. The documents that hit on the Search Terms have been, and continue to be, walled off from the SEC's enforcement staff and held only by the forensic unit.

The purpose of the current forensic review is to identify those documents that appear only on the SEC Images and that contain one or more of the Search Terms. The forensic unit has completed its comparison of the non-email documents on the FBI Images and SEC Images. There are approximately 1400 non-email documents on the SEC Images that both do not appear on the FBI Images and that hit on one or more of the Search Terms. Yesterday, the forensic unit provided copies of these documents to Maiden's counsel, and counsel has agreed to review them expeditiously to determine if Maiden will continue to assert any privileges over those documents.

The forensic unit's comparison of the email documents contained on the FBI Images and the SEC Images has proven more difficult. Specifically, when the forensic examiners extracted emails for the purpose of comparison, the extraction changed the metadata, thereby complicating and prolonging the comparison process. The SEC has represented to the Government that the forensic unit is working expeditiously to find a work-around and will complete the analysis as soon

The parties agree that the determination whether there has been a privilege waiver and subject matter waiver, and the question whether the motion belongs before Judge Nathan in the first instance, depends on the additional analysis being done by the forensic unit and the privilege review being undertaken by Maiden's counsel. After consultation, the parties respectfully request that the Court continue to hold these issues in abeyance and that the parties further update the Court on Friday, December 16, 2016. This schedule will allow the forensic comparison to continue and will allow Maiden's counsel to review documents and consider whether to continue to assert any privileges.

Respectfully submitted,

By: /s/
 Damian Williams/Andrea M. Griswold
 Assistant United States Attorneys
 (212) 637-2298/1205